

1986—Pub. L. 99-576 substituted “the Administrator” for “he” before “may request”.

#### EFFECTIVE DATE

Section effective Sept. 30, 1976, see section 405(a) of Pub. L. 94-432, set out as an Effective Date of 1976 Amendment note under section 1521 of this title.

### § 5107. Claimant responsibility; benefit of the doubt

(a) CLAIMANT RESPONSIBILITY.—Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.

(b) BENEFIT OF THE DOUBT.—The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

(Added Pub. L. 100-687, div. A, title I, §103(a)(1), Nov. 18, 1988, 102 Stat. 4106, §3007; renumbered §5107 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-83, §4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 106-398, §1 [[div. A], title XVI, §1611(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-359; Pub. L. 106-419, title I, §104(c)(2), Nov. 1, 2000, 114 Stat. 1828; Pub. L. 106-475, §4, Nov. 9, 2000, 114 Stat. 2098.)

#### AMENDMENTS

2000—Pub. L. 106-475 substituted “Claimant responsibility; benefit of the doubt” for “Burden of proof; benefit of the doubt” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) Except when otherwise provided by the Secretary in accordance with the provisions of this title, a person who submits a claim for benefits under a law administered by the Secretary shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. The Secretary shall assist such a claimant in developing the facts pertinent to the claim. Such assistance shall include requesting information as described in section 5106 of this title.

“(b) When, after consideration of all evidence and material of record in a case before the Department with respect to benefits under laws administered by the Secretary, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of the matter, the benefit of the doubt in resolving each such issue shall be given to the claimant. Nothing in this subsection shall be construed as shifting from the claimant to the Secretary the burden specified in subsection (a) of this section.”

Pub. L. 106-398, §1 [[div. A], title XVI, §1611(a)], directed the general amendment of the section catchline and text. Pub. L. 106-419, §104(c)(2), provided that, as of the enactment of Pub. L. 106-419, the amendment made by Pub. L. 106-398, §1 [[div. A], title XVI, §1611(a)], was deemed for all purposes not to have taken effect and that Pub. L. 106-398, §1 [[div. A], title XVI, §1611(a)], ceased to be in effect.

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3007 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

Pub. L. 102-40, §402(d)(1), substituted “5106” for “3006”.

Subsec. (b). Pub. L. 102-83, §4(b)(1), (2)(E), substituted “Secretary” for “Administrator” before “the burden”.

Pub. L. 102-83, §4(a)(3), (4), substituted “Department” for “Veterans’ Administration”.

Pub. L. 102-83, §4(a)(1), substituted “administered by the Secretary” for “administered by the Veterans’ Administration”.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-475, §7, Nov. 9, 2000, 114 Stat. 2099, provided that:

“(a) IN GENERAL.—Except as specifically provided otherwise, the provisions of section 5107 of title 38, United States Code, as amended by section 4 of this Act, apply to any claim—

“(1) filed on or after the date of the enactment of this Act [Nov. 9, 2000]; or

“(2) filed before the date of the enactment of this Act and not final as of that date.

“(b) RULE FOR CLAIMS THE DENIAL OF WHICH BECAME FINAL AFTER THE COURT OF APPEALS FOR VETERANS CLAIMS DECISION IN THE MORTON CASE.—(1) In the case of a claim for benefits denied or dismissed as described in paragraph (2), the Secretary of Veterans Affairs shall, upon the request of the claimant or on the Secretary’s own motion, order the claim readjudicated under chapter 51 of such title, as amended by this Act, as if the denial or dismissal had not been made.

“(2) A denial or dismissal described in this paragraph is a denial or dismissal of a claim for a benefit under the laws administered by the Secretary of Veterans Affairs that—

“(A) became final during the period beginning on July 14, 1999, and ending on the date of the enactment of this Act; and

“(B) was issued by the Secretary of Veterans Affairs or a court because the claim was not well grounded (as that term was used in section 5107(a) of title 38, United States Code, as in effect during that period).

“(3) A claim may not be readjudicated under this subsection unless a request for readjudication is filed by the claimant, or a motion is made by the Secretary, not later than 2 years after the date of the enactment of this Act.

“(4) In the absence of a timely request of a claimant under paragraph (3), nothing in this Act [see Short Title of 2000 Amendments note set out under section 101 of this title] shall be construed as establishing a duty on the part of the Secretary of Veterans Affairs to locate and readjudicate a claim described in this subsection.”

#### EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100-687, set out as a note under section 7251 of this title.

### § 5108. Supplemental claims

(a) IN GENERAL.—If new and relevant evidence is presented or secured with respect to a supplemental claim, the Secretary shall readjudicate the claim taking into consideration all of the evidence of record.

(b) DUTY TO ASSIST.—(1) If a claimant, in connection with a supplemental claim, reasonably identifies existing records, whether or not in the custody of a Federal department or agency, the Secretary shall assist the claimant in obtaining the records in accordance with section 5103A of this title.

(2) Assistance under paragraph (1) shall not be predicated upon a finding that new and relevant evidence has been presented or secured.

(Added Pub. L. 100-687, div. A, title I, §103(a)(1), Nov. 18, 1988, 102 Stat. 4107, §3008; renumbered